



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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AUG - 4 2008

Dr. Roy E. Crabtree
Regional Administrator
Southeast Regional Office
National Oceanic and Atmospheric Administration
263 13th Avenue South
St. Petersburg, Florida 33701

RE: 0648-AV61 - Draft Environmental Impact Statement for Amendment 4 to the Spiny Lobster Fishery Management Plan of **Puerto Rico** and the U.S. Virgin Islands, **and** Amendment 8 to the Spiny Lobster Fishery **Management** Plan of the Gulf of Mexico and South Atlantic

Dear Dr. Crabtree:

The Environmental Protection Agency (EPA) has reviewed the Draft **Environmental** Impact Statement (DEIS) for Amendment 4 to the Spiny Lobster Fishery Management Plan of **Puerto Rico** and the U.S. Virgin Islands, and Amendment 8 to the **Spiny Lobster** Fishery Management Plan of the **Gulf** of Mexico and South Atlantic. This review was conducted in accordance with Section **309** of the Clean Air Act, as amended (**42 U.S.C.** 7609, PL 91-604 **12(a)**, 84 Stat. **1709**), and **the** National Environmental Policy Act.

The DEIS examines two actions with various alternatives to restrict imports of spiny lobster (*Panulirus argus*) into the United States to minimum conservation standards to achieve an increase in the spawning biomass of the spiny lobster stock and increase long-term yields from the fishery. Minimum size limits (minimum carapace width and tail length/weight) for the spiny lobster would increase egg biomass and age/size of reproductive population, contributing to better recruitment and a larger shellfish stock. Increasing recruitment is particularly relevant for the spiny lobster not only because it is a shared pan-Caribbean resource that is "fully exploited or over-exploited." Minimum standards are an additional effort to control the harvest of undersized lobsters. The latter is already somewhat controlled under the Lacy Act, but there apparently are loopholes (e.g., importation of lobster "meat" instead of intact and therefore still measurable, tails).

EPA defers to National Marine Fisheries Service (NMFS) to determine the best management techniques that will achieve fishery objectives. However, as the **DEIS** does not indicate a preferred alternative, EPA will rate the alternatives for each action (please see enclosed rating sheet).

Action 1: Minimum Size Limits for Spiny Lobster Imported into the United States.

- Alternative 1 (no action) is rated **EC-2** (Environmental Concerns – Insufficient information) as this alternative would have significant impacts on the fisheries, and is not protective of the species.
- Alternative **2** limits the importation of lobster tails into the continental United States to those weighing at **least** 5 ounces plus or minus one standard deviation, **i.e.**, a range of **4.2-5.4** ounces. Compliance could also be demonstrated by a greater than 3.0-inch carapace width or a greater than or equal **to** 5.5-inch tail if only the tail is present. Alternative 2 also **limits** importation of lobster tails to Puerto **Rico** and the US Virgin Islands to those having a tail weight **of** a minimum of 6 **ounces** (**i.e.**, 5.9-6.4 **oz**) or a 3.5-inch carapace width and a 6.2-inch **tail** if only the tail is present. This Alternative is rated LO (**lack** of objections) and is! more conservative and protective of the species than either Alternatives 1 or 3.
- Alternative 3 limits the importation of spiny lobster tails weighing at least 5 ounces plus or minus one standard deviation, **i.e.**, a range of 4.2-5.4 ounces or a greater than 3.0-inch carapace width or a greater than or equal to 5.5-inch tail if only the tail is present for both the continental United States, Puerto **Rico** and the US Virgin Islands. This alternative is rated LO; however, it is not as protective as Alternative **2**.
- EPA **is concerned** that the DEIS did not **evaluate** a **fourth** alternative, that would keep the more restrictive tail standard for the Caribbean (as described in Alternative 2) and apply it to the continental United States, as well. This alternative, also rated LO, would be the most protective to the species.

For Action 2: Implement Other Import Restrictions on Spiny Lobster.

- Alternative 1 (no action) is rated as **EC-2**; as this alternative is not protective of the species.
Alternative 2 (do not allow the importation of spiny lobster tail meat which is not in whole tail form with the exoskeleton attached; and do not allow the importation of spiny lobster with eggs attached or importation of spiny lobster where the eggs, swimmerets, or pleopods have been removed or stripped) is rated LO and is the most protective of the species.
- Alternative 3 (do not allow the importation of spiny lobster tail meat which is not in whole tail form with the exoskeleton attached) is rated LO.
- **Alternative** 4 (do not allow the importation of spiny lobster with eggs attached or importation of spiny lobster where the eggs, swimmerets, or pleopods have been removed or stripped) is rated LO.

Other Comments:

- **Dry Tortugas Study** - Regional differences in the size of 50% maturity of the spiny lobster have been documented within US and Caribbean waters. Page 86 compares lobster in the Dry Tortugas National Park sanctuary with non-sanctuary

populations. While these differences are likely real, the Dry Tortugas spiny lobsters may not be a truly comparable population since these lobsters have no fishing pressure while outside populations are very exploited. It would seem more appropriate to compare fished populations in different parts of the Caribbean to see if significant differences in size of first maturity exist that should be considered in setting minimum size limits. As suggested for Action 1, if **significant** differences exist, we suggest that the more conservative (larger) carapace width standard be used by **all** fishers to insure a good reproducing population and a rapid restoration of the resource.

- Figure 5.2.2 (pg. 20) on the dorsal morphology of the spiny lobster is informative. However, we suggest that the ventral or underside of the lobster also be illustrated to show the swimmerets and pleopods since they were mentioned in Action 2. An illustration or photo of a "berried" female would also be useful to the public reviewer.
- Although this DEIS addresses both Amendment 4 and 8, the introduction does not mention these amendments or that the proposed actions would presumably apply to both amendments and Fisheries Management Plans. As such, the title and text are not as connected as they should be in the **DEIS**.
- Use of one standard deviation instead of only one morphometric measurement is useful because it provides a more user-friendly range (e.g., 5.9-6.4 oz vs. 6 oz). Realistically, however, only the lesser metric will be used onboard by fishers for compliance. Although we defer to NOAA and Councils, we suggest verification that the lesser lengths and weights are still large enough minimums to restore the species in a reasonable timeframe.
- Add GMFMC to the acronym glossary.

If you have any questions, please call Lingard Knutson of my staff at (212) 637-3747.

Sincerely yours,



John Filippelli, Chief
Strategic Planning Multi-Media Programs Branch

Enclosure

SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTION

Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory **from** the standpoint of environmental quality, public health or welfare. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the **Impact** Statement

Category 1-Adequate

EPA believes the draft EIS adequately sets forth the environmental **impact(s)** of the preferred alternative and those of the alternatives reasonably available to the project or action. No **further** analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analysis, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA **and/or** Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From: EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."